

Office of Investigations



April 18, 2013

**By Fax, Hand Delivery (on site) and First Class Mail**

Mr. Donald Adair  
c/o Mr. Ted Uptmore  
West Fertilizer Co.  
1471 Jerry Mashek Drive  
West, Texas 76691

Dear Mr. Adir:

As you know, the U.S. Chemical Safety and Hazard Investigation Board (CSB) is conducting an investigation, pursuant to the authority of 42 U.S.C. § 7412(r)(6)(C)(i), of the incident that occurred at West Fertilizer Company, on April 17, 2013. This letter serves as notice to West Fertilizer Company that the facilities, equipment, and information described in this letter are relevant to the CSB's investigation and will be inspected and/or tested by the CSB, under the authority of 42 U.S.C. § 7412(r)(6)(L)(ii). This letter also serves to confirm the CSB's understanding with respect to the site and relevant evidence related to this incident.

Federal law authorizes the CSB to enter West Fertilizer Company's property and "do all things therein necessary for a proper investigation," including inspecting "records, files, papers, processes, controls, and facilities" and taking relevant samples. 42 U.S.C. § 7412(r)(6)(L)(ii). In lieu of the CSB seeking custody of certain evidence at this time, West Fertilizer Company and its agents (hereinafter collectively, "West Fertilizer") will ensure that relevant evidence (defined in part below) is preserved from alteration or destruction, so that the CSB has the opportunity to exercise its statutory investigative authority.

West Fertilizer will take special care to preserve tangible objects, including processes, controls, and facilities; samples of substances; and records, files, and papers (regardless of format), that were involved in the April 17, 2013 incident or are potentially relevant to the CSB's investigation thereof. Without limiting the preceding general obligation, the CSB specifically understands that West Fertilizer will preserve, in as-found condition, the warm, hot, and exclusion zones defined in the drawing facility diagram or schematics mark-up dated 04/17/2013. Furthermore, and again without limiting the preceding general obligation, the CSB specifically understands that West Fertilizer will preserve, in as-found condition, all equipment and surrounding structures involved in the April 17, 2013 explosion and fire that CSB wants preserved, if known at this time.

The CSB recognizes that West Fertilizer is taking or may be taking actions ("immediate incident response activities") the company deems reasonably necessary to place the West Fertilizer facility in a standby mode safe from threat of serious harm to life, property, or the environment. The CSB expects that West Fertilizer will notify the CSB contacts designated in this letter, in

advance whenever possible, of all such actions. If such actions require that the facilities and/or equipment described in the preceding paragraph, which would otherwise be preserved, be changed from their as-found conditions, West Fertilizer will document all such changes, including but not limited to changes to valve positions, and provide the documentation of changes to the CSB. West Fertilizer should not physically remove materials, equipment, valves, instruments, or piping from their as-found locations unless there is no alternative method for rendering the location safe. If removal is necessary, West Fertilizer must document the pre-removal condition; retain the removed items in a secure location; and provide the documentation, and access to the items, to the CSB.

Following the cessation of immediate incident response activities, the CSB understands that West Fertilizer will notify the CSB contacts designated in this letter of any further plans to alter the facility zones and/or equipment described in this letter from their as-found condition or to remove equipment or other objects from their location at the time of the incident. Before any such plans are carried out, West Fertilizer will obtain the CSB's approval of a protocol for, and the date and time of, the alteration/removal. West Fertilizer will also permit CSB personnel to witness and document any alteration or removal. If exigent circumstances require further alterations/removal under conditions that make advance notice to and coordination with the CSB impossible, West Fertilizer should document the pre-alteration/removal condition and notify the designated CSB contacts as soon as possible.

In addition, the CSB understands that all physical evidence collected during this investigation will be stored in a secure location to be identified by West Fertilizer and made known and accessible to the CSB. Access by any parties to the physical evidence stored in such location shall be documented in an evidence control log, annotating who accessed what evidence, what (if any) alterations to the evidence occurred, and the duration of each visit. That log shall be made available to the CSB at the agency's request. Before accessing the stored physical evidence, both the CSB and West Fertilizer will notify the other party and offer the other party the opportunity to be present at the time the evidence is accessed.

The designated CSB contacts for all notifications described in this letter are as follows:

<u>Primary Contact:</u>	Donald S. Holmstrom	<u>Alternate Contact:</u>	Johnnie Banks
	Investigator-in-Charge		Investigation Supervisor
	(202) 413-2690 (cell)		(202) 441-6092 (cell)
	(303) 236-8701 (office)		(202) 261-7667 (office)
	Don.Holmstrom@csb.gov		Johnnie.Banks@csb.gov

As the CSB investigation continues, the agency may identify additional specific tangible objects, substances, or records that it intends to inspect and/or test. The CSB will notify West Fertilizer of such items and expects that those items will be preserved in the manner described in this letter.

Thank you for your anticipated cooperation with the CSB's investigation.

Sincerely,

A handwritten signature in black ink, reading "Donald S. Holmstrom". The signature is written in a cursive style with a large, stylized 'D' and 'H'.

Donald S. Holmstrom  
Investigator-in-Charge

Cc: Daniel Horowitz  
Johnnie Banks  
Cheryl MacKenzie